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MAY 01 2023

Kittitas County CDS

May 1, 2023

Jeremiah Cromie, Planner II
Kittitas County Community
Development Services
411 N. Ruby Street, Ste. 2
Ellensburg WA 98926

Re: Thorp Landing Plat, LP-23-00001

Dear Jeremiah:

The purpose of this letter is to respond to the comments Community Development received for the above-referenced land use application. We have broken out the individual comment letters into a matrix and included two exhibits for your review. Please see the following, Response to Comments Matrix, Exhibit A, and Exhibit B.

Regards,

Chad Bala



Cc: Thorp Landing LLC
Jeff Slothower

Response to Comments Matrix

DATE	COMMENT LETTER	ITEMS	RESPONSE TO COMMENTS
2/21/23	Snoq. Tribe	No substantive comments to offer at this time. If the scope for the project or parameters for the APE change we reserve the right to modify our current position.	At this time the plat will not be modified. Please also see RLR's cultural resources report dated July 5, 2022.
2/21/23	WSDOT Av.	WSDOT has reviewed and found that there are no land use compatibility or airspace issues in relations to the local airports. No comments.	Agreed. This plat has no airspace issues with local airports.
2/22/23	WA ST DOH	DOH concurs with the applicant's statement in the SEPA Checklist that drinking water for the 10 lot development will be provided by a Group B Water System that will be submitted to KC Health for review and approval.	Applicant understands this and has identified that 2 lots will be served by an existing and approved Group B Water System and that a new well is proposed on lot 7 of the proposed plat and will be approved as a Group B Water System serving the rest of the proposed plat.
2/23/23	WAST DOH	Is this for a stand-alone development consisting of a 10 connection water system or is it being added to the existing Thorp Landing Water System to generate a 16 connection water system?	Staff clarified in the email chain and referenced the SEPA Checklist that 2 lots of the proposed plat will be served by an existing approved Group B Water System and the 8 other lots will be serviced by a newly proposed Group B Water System. See also Exhibit A
3/1/23	WA ST DOH	Extraction of water for both wells would be considered a project and the combined groundwater extraction would need to be evaluated as a total. As an example and clarification regarding the implication of "project", if the applicant does not have any water rights, then the total quantity of groundwater that can be extracted (or pumped) from the ground, on any single day, is a single exempt well limit of 5,000 gallons. The Applicant would not gain two exempt well limits simply because the project is split into two pieces.	See Exhibit A.
		If the applicant is able to proceed with an expanding Group B and a second Group B, then KC Health would administer the approval of the two.	For clarification. The existing (County approved) Group B Water System, is not being expanded and is approved for 6 connections (See Exhibit 10 of the application submittal). See email chain between and County, DOH, & KCDP dated Feb. 22 & March 1, 2023.

2/23/23	Colville Tribe	Request any ground disturbing activities to have an IDP in place prior to implementation. This undertaking involves division of plats for the purpose of rural residential development.	Per RLR Arch. & Cultural Resource consultant, who has already surveyed the property, recommends the project to proceed as planned and finds no historic properties affected (RLR Cultural Resources Report dated July 5, 2022).
		The Tribal Historic Preservation Officer expects to also see the development plans for these individual parcels through their various implementations.	Kittitas County is the oversight for any future development on this proposed plat whether it be for building permits, road construction etc. See RLR report.
		If ground disturbing activities are to be conducted, such as the installation of septic system or scraping of driveway, creation of concrete pad, a cultural resource surface survey and subsurface testing of the area in and directly around the proposed ground disturbance are recommended as a surface observation will not be an accurate assessment of the existent potential for subsurface cultural deposits.	Per RLR Arch. & Cultural Resource consultant, has already surveyed the property. This report is part of the file for review and has been reviewed by the Yakama Nation, who has reviewed and agreed with therefore allowing Kittitas County to move forward with this proposal. Within the executive summary of RLR's report it notes that this site has been continuously in the past and currently farmed and further notes that no cultural material was located during their subsurface testing. With the aforementioned RLR recommended the project to proceed as planned and finds no historic properties affected (RLR Cultural Resources Report dated July 5, 2022).
		There are known cultural resources of historic significance nearby and these particular parcels are considered moderately to very high risk for an inadvertent discovery according to the DAHP predictive model.	See RLR's Cultural Resource Report on file with Kittitas County. Please note that RLR's report states that this site has been continuously in the past and currently farmed and further notes that no cultural material was located during their subsurface testing (RLR Cultural Resources Report dated July 5, 2022).
		CCT H/A recommends that during implementation there be an inadvertent discovery plan (IDP) in place to ensure compliance with all of Section 106 and relevant cultural resource laws both federally and to the State of Washington.	As part of RLR's Cultural Report, specifically Pages 35 & 36, an Inadvertent Discovery Procedure (Plan) has been established and accepted by the Yakama Nation and Kittitas County (RLR Cultural Resources Report dated July 5, 2022).
2/24/23	KC Fire Marshall	Fire apparatus Access Road required	Agreed. This private road, which a portion has already been built and certified by an engineer, will be completed to the Kittitas County Private Road Standards.
		Key Box required if a gate is installed.	Agreed. Please note at this time no gate is proposed therefore a key box will not be needed or required.
		Fire flow documentation must be provided to the KCFMO previous to final inspection.	See Exhibit B. Per Fire Marshall Email dated 4-26-23 Fire Flow Requirements and the hydrants system requirements are waived.

		Fire flow must comply with IFC Appendix B. In cases where buildings/structures do not exist yet, the reference of NFPA 1142, 22, 20 and 24 may be required. This requirement provides for a reduction of the fire flow if the structures are protected with an approved fire sprinkler systems installed in accordance with the IFC Chapter. 9.	See Exhibit B. Per Fire Marshall Email dated 4-26-23 Fire Flow Requirements and the hydrants system requirements are waived.
		Fire Flow in the amount of 1000 gallons per minute for the duration of 1 hour.	See Exhibit B. Per Fire Marshall Email dated 4-26-23 Fire Flow Requirements and the hydrants system requirements are waived.
		Please install a water system that is capable of this flow rate and separate from any residential water supplies.	See Exhibit B. Per Fire Marshall Email dated 4-26-23 Fire Flow Requirements and the hydrants system requirements are waived.
		Please submit design plans to the KCCDS so they can be reviewed/approved by Safebuilt.	See Exhibit B. Per Fire Marshall Email dated 4-26-23 Fire Flow Requirements and the hydrants system requirements are waived.
		The code allows for alternate water supplies, such as tanks, and a stand alone hydrant to suffice so long as the fire flow and rate of delivery are the same.	See Exhibit B. Per Fire Marshall Email dated 4-26-23 Fire Flow Requirements and the hydrants system requirements are waived.
		Fire hydrant system: when required the fire hydrant system shall comply with IFC Appendix C and Section 507. Contact KCFMO to determine hydrant spacing, flow requirements, and discharge port specifications.	See Exhibit B. Per Fire Marshall Email dated 4-26-23 Fire Flow Requirements and the hydrants system requirements are waived.
		Depending on the proposed project, the hydrant system may need to comply with Sections in NFPA 22, 24 and/or 25.	See Exhibit B. Per Fire Marshall Email dated 4-26-23 Fire Flow Requirements and the hydrants system requirements are waived.
		Hydrant systems require a KCFMO permit. If a pump is needed to ensure the proper operation of a hydrant system a KCFMO permit is required.	See Exhibit B. Per Fire Marshall Email dated 4-26-23 Fire Flow Requirements and the hydrants system requirements are waived.
		Wildfire protection. All residential, commercial-residential structures will receive a WUIC evaluation upon submission of the preliminary site analysis, unless pre-application approval is granted. Shortly after pre-application approval the KCFMO will perform a WUIC evaluation and attach it to the official comments. The WUIC requirements will comply with the IWUIC.	See Exhibit B. Per Fire Marshall Email dated 4-26-23 the lots are required to be sprinklered from the irrigation canal(s), the lots are low hazard WUIC scores, and the lots do not have a high ability to expose to other structure in the event of a fire.
2/28/23	Westside Irrig. Ditch Co. (WSIC)	WSIC sites KCC 16.18 as County requirements	See Exhibit A.
		WSIC bylaws have been amended to require the following:	
		Any stockholder etc, who undertakes any subdivision within WSIC service area must construct an adequate water transmission system, including easements or right of way to allow irrigation delivery to each newly created or reconfigured lot.	The applicant agrees to this.

		The development proponent must provide WSIC and the County with adequate drawings or surveys, showing elevations, the locations of anticipated new parcels and the routing of the proposed irrigation delivery system across WSIC lands.	The applicant agrees to this.
		Newly proposed irrigation facilities must not impair the rights or uses of downgradient water owners or users, who shall be consulted in connection with the system design.	The applicant agrees to this.
		Only following confirmation that the newly proposed irrigation facilities are adequate in all respects for continuing irrigation water delivery to affected WSIC lands will the WSIC Board of Trustees ("Board") or it's designee provide written certification thereof to the County.	The applicant agrees to this.
		Owners of all subdivided lands receiving WSIC water through a common headgate must appoint a single representative for purposes of communicating with WSIC and its Ditch Supervisor on all matters concerning irrigation water deliveries.	The applicant agrees to this.
		WSIC will encourage landowners to formally organize as a water users association or similar entity, which they may conclusively determine their relative rights and obligations concerning water deliveries; collection and remittance of WSIC assessments and charges etc.	The applicant agrees to this.
		Following final County subdivision approval, the Board will reapportion and reallocate WSIC stock to each newly configured parcel(s) into the name of then current owners of affected property.	The applicant agrees to this.
		If one or more stockholders of subdivided lands become delinquent in the payment of WSIC assessments, the Ditch Supervisor will reduce deliveries to the affected WSIC headgate in proportion to the delinquency, with affected stockholders being responsible for allocating reduced deliveries to the paid-up lands only.	The applicant agrees to this.
3/7/23	WA ST DOE	In Washington State, prospective water users must obtain authorization from the Dept. of Ecology before diverting surface water or withdrawing groundwater, with one exception. Ground water withdrawals of up to 5,000 gallons per day used for single or group domestic supply, up to 5,000 gallons per day for industrial purposes, stock watering, and for the irrigation of up to one-half acre of non-commercial lawn and garden are exempt from the permitting process.	See Exhibit A. See also response to Washington State Department of Health comment.

3/8/23	WA ST PARKS & RECREATION COMMISSION	<p>1. Potential Adverse Impact: Trespass: Mitigation Measure: proponent should be responsible for professionally surveying, marking, recording for the common property line. State Parks is requesting a copy of the survey be provided for records.</p>	<p>The preliminary plat map was provided as part of the submittal application. This map reflects the current property boundaries of the proposed lots. If this plat is approved it will eventually be recorded. Once it's recorded a recorded version will be provided to the WA ST Parks and Recreation Dept.</p>
		<p>2. Potential Adverse Impact: Trespass, dumping, uncontrolled access, and indiscriminate use. Mitigation Measure: If Proponent needs to access State Park Land, either temporarily or permanently, the project proponent will need to apply for and obtain legal easement for access.</p>	<p>This proposal isn't proposing any access to the State Parks Land. The access for this proposal is through the established Thorp Landing Lane, which will be extended to serve these lots. No trespassing dumping signs will be established along the property line adjacent to the WA State Parks Land.</p>
		<p>3. Potential Adverse Impact: Impacts to recreation during construction. State Parks is concerned with public safety during construction.</p>	<p>There is no adverse impact as the construction is on private property. A portion of the road is approved by Kittitas County and built.</p>
		<p>4. Potential Adverse Impact: Noise, light, glare, natural resources. Mitigation: Provide development setbacks or other protection measures to protect the existing mature vegetation and associated root system that exist along the common property line. Submit plans immediately for review and approval and incorporate Parks comments into the project as necessary.</p>	<p>Standard Kittitas County Setback within the AG-5 zone will apply. Specifically Per KCC 17.28A.040 Front setback is 25', 17.28A.050 Side setback is 5', 17.28A.060 Rear setback is 25'. Noise, light and glare has been addressed within the CC&R's that will govern over this proposal. As for submitting plans to the jurisdictional agency, in this case Kittitas County, will review building plan submittals for consistency with county codes, setbacks, & critical areas etc.</p>
		<p>5. Potential Adverse Impact: Stormwater discharge. Mitigation Measure: Grade, shape or otherwise contour the project to prevent stormwater from discharging onto State Parks property.</p>	<p>As reflected within the application submittal, specifically Exhibit #16 of the plat submittal application, is the stormwater erosivity waiver through the WA Dept. of Ecology. All stormwater/erosion will be onsite and addressed as part of the road construction, thus staying on site. As for residential construction all stormwater will stay on the proposed lots. With each lot being 5 acre plus in size and most likely construction taking place closer to the access road, it is not foreseeable that stormwater will discharge onto WA ST Parks land.</p>
3/9/23	KC Public Health	<p>On-site sewage must adhere to the standards set by both the WAC and KCC in accordance with KCC 13.04.090, a minimum of one soil log for each proposed lot where individual sewage disposal system are contemplated must be completed.</p>	<p>See Exhibit A.</p>

		In accordance with WAC 246-272A-0210, all on-site septic setbacks must be met with particular attention being paid to the distances between neighboring lots, reserve areas, and the location of the Group B well.	The applicant agrees to this.
		Prior to final plat approval:	The applicant agrees to this.
		A-1 soil logs are required for lots.	The applicant agrees to this.
		A-2 An individual well site review is required for locating of the proposed Group B.	The applicant agrees to this.
3/9/2023	Fudacz	SEPA Checklist #3 Water subsection 3. Applicant indicated that there are no known drainage issues that could be affected by subdividing parcel 443233 into 10 five acre lots. This is incorrect there are numerous natural springs and historic wooden and cement tile drains across many sections of the proposed large plat, including recorded irrigation easement. See Exhibit A	See Exhibit A.
		Landowner exhibited a lack of responsibility citing items	See Exhibit A.
		Exhibits B and C outline historical significance and legal rights to said waters	See Exhibit A.
		Wetlands and stream critical areas report failed to meet the standards outlined in the Critical Areas Studies and failed to highlight perennial springs throughout the property dating back to 1913. Critical areas report was sub-par and the hydrology exists citing a March 8, 2023 date and pictures of water running on the surface and through drain pipes and makes a statement that water is running year round and no irrigation related as stated in the Critical Areas Report.	See Exhibit A.
		Since a wetland was not properly identified in the original study on May 10, 2022, an adequate and or proper Eastern Washington Wetland rating was not given, thus not identifying property setbacks and buffer zones associated with the wetland areas.	See Exhibit A.
		Kittitas County GIS mapping the area of Perennial Spring C is listed within a wetland area, but this study indicates that it is not a wetland.	See Exhibit A.
		Exhibit D indicating the locations of documented springs with the DOE and lands that have the rights to such water. Spring 1971#2 and 2046 lie within the Perennial Spring C as outline in Exhibit A. Springs 4817#1 and 4817#2 lie within Perennial Spring B.	See Exhibit A.

		In addition, Exhibit A, Perennial Spring A provided drinking water to landowners in the main part of the Thorp Community and was associated with Parcel 025933 until transfer of rights.	See Exhibit A.
		These springs and the rights to this water correspond to the shaded areas in Exhibit D.	See Exhibit A.
		Current landowners have no right to use any water associated with these perennial springs, nor do any future owners have the right to use these waters for irrigation, stock, or to divert or obstruct waterways for prescribed/documentated easements as outlined in RCW 90.03.410.	See Exhibit A.
3/9/23	Paula Thompson	Referencing the 2022 Comprehensive Plan SEPA Checklist was inadequate and that the use of a non-project action and nothing can be speculated about environmental issues and concerns.	See Exhibit A.
		Plat Sepa Checklist submitted once again with no identification of wetlands and perennial springs and associated water rights which have deeded easements and prescriptive easements through this property to deliver water to the water right holders.	According to KC GIS under the wetland layer, there is a wetland within the Goodwin Road County Right-of-Way. This is basically the road side ditch. The applicant commissioned a Critical Area Report (See Exhibit 12 of the application submittal) which identifies this wetland within the county right-of- way. Even though this wetland is within the county right-of-way the Critical Area consultant reviewed this wetland in accordance with Kittitas County Code and established the appropriate buffers consistent with the county code. At the same time on the GIS mapping system of the county you will see a wetland identified within the Railroad right-of-way and Thorp Depot Road. This wetland is off the property but there is a tail water ditch that travels along and crosses Parcel 19591 (not part of this proposed plat application) and crosses Thorp Landing Road and crossing other existing parcels eventually crossing the Thorp Hwy. Per the Exhibit 12 of the plat submittal (Critical Area Report), Section 4.4 Irrigation regime Pg. 7 looks to identify this tail water section as a tail water ditch. Therefore wetlands were identified off-site and not literally on the proposed Plat. See Also Exhibit A

		Several lawsuits pertaining to these water rights over the last 100 years concerning the disruption of their delivery have been put in the record for this SEPA. The delivery rights of the water right holders has been upheld in court and will be vigorously defended.	See Exhibit A.
		The creation of these lots without fire hydrants will lower the fire rating of the Thorp Fire District and increase insurance cost for every other landowner.	Per Fire Marshall Email dated 4-26-23 Fire Flow Requirements and the hydrants system requirements are waived.
		A turn lane on Thorp Hwy should be required due to the 17 lots served by the Thorp Landing Lane.	Kittitas County Public Works has already approved the approved access permit, grading permit from Thorp Hwy into the existing parcels serving them. Currently the Applicant is working with a transportation consultant to review and address any other road items regarding this proposed 10 lot plat.
		They do not address irrigation runoff from the proposed lots in the water runoff item.	Water runoff including stormwater was addressed within the SEPA Checklist 3. Water, c. Water Runoff. Please note Exhibit 16 of the submittal that contains the WA DOE Stormwater Erosivity Waiver. Please note irrigation water that is pertinent to the users will not be disrupted etc. See also Exhibit A.
		They can't allow irrigation runoff onto adjacent land within the plat to surrounding lands.	See Exhibit A.
		There is no irrigation plan addressing these issues and responsibilities.	West Side Irrigation Company (WSIC) commented on the proposed plat. The applicant will be required to design, submit etc., an irrigation distribution plan to West Side Irrigation Company for review and approval, by their Board, prior to final plat approval. Furthermore, WSIC has amended their bylaws to also require a single representative of this plat to represent this plat community in communicating with WSIC.
		Placing homes, driveways, outbuildings, etc. definitely may have affects on existing drainage patterns and create new patterns with unintended consequences within and outside the plat.	See Exhibit A.

	Johnny & Erinn 3/9/23 Boitano	<p>Current lots proposed were incorrectly rezoned due to the fact that they are inside flood areas.</p>	<p>This proposed ten lot plat is not completely within the floodplain. As you can see in Exhibit #4 of the Plat Application submittal there is a small portion of a 500 yr floodplain and 100 yr floodplain. In Exhibit #2 these floodplain areas have been identified on the survey map. More specifically the floodplain is the back portion of Lots 6, 7, 8, 9, & 10, and a majority of it is 500 year floodplain. With floodplains in Kittitas County, one is allowed to build within the 100 year floodplain as long as flood development requirements are met.</p>
		<p>Most nearby residents do not have deeper wells and adding 10 more homes plus the other newly approved 7 will have negative impact on our aquifer which will then lead to residents needing to dig deeper wells.</p>	<p>This plat proposes a Group B water system (a single well) to serve these ten lots. This system will be designed and submitted to Kittitas County Health for review and approval.</p>
		<p>Adding 10 more septic systems (17 if you include the other newly approved lots) will greatly increase infrastructure and could potentially lead to well contamination. In the summer everyone flood irrigates which brings the water table to a very high level in this area, which will easily carry contaminants to not only our aquifer but nearby streams.</p>	<p>Per the Kittitas County Health Department's comment letter and county code, this proposed plat is allowed to apply for individual septic systems etc.</p>
		<p>Adding 10 building lots (homes, shops, roads and such), will negatively affect the surface water and drainage patterns, potentially causing severe damage to these newly constructed homes but also to existing residences and farms.</p>	<p>See Exhibit A.</p>
	1/12/22 KCPublic Health	<p>Comment Letter from Public Health on Connor Short Plat</p>	<p>See Exhibit A.</p>
	KC Dept of Public 3/10/23 Works (DPW)	<p>Access</p>	
		<p>1. An Approved access permit shall be required from DPW prior to creating any new driveway access or performing work within the county right of way.</p>	<p>Agreed. Please note that a portion of Thorp Landing Lane has been reviewed and approved by KC, and built. Thorp Landing Lane will be extended to serve this proposed plat.</p>
		<p>2. Private roads serving any of the proposed lots will be inspected and certified by a licensed professional engineer for conformance with the current KC Road Standards, 2015 edition.</p>	<p>Agreed. Please note that a portion of Thorp Landing Lane has been reviewed and approved by KC, and built. Thorp Landing Lane will be extended to serve this proposed plat.</p>
		<p>Road certification will be required prior to final approval.</p>	<p>Agreed. Please note that a portion of Thorp Landing Lane has been reviewed and approved by KC, built, and includes a road certification (See Exhibit 15 of plat submittal).</p>

		If a performance guarantee is used in lieu of the required improvements, the private road shall be constructed and certified to comply with the minimum requirements for the International Fire Code prior to issuing a building permit.	Agreed.
		3. All road construction within the public or private right of way shall be designed by or under the direct supervision of a civil engineer, licensed in the State of WA.	Agreed.
		Please submit road plan and profile drawings along with any associated drainage reports for a formal civil review to Kittitas County DPW (12.04.020).	Agreed.
		4. Roads longer than 150' in length are required to provide a fire apparatus road turnaround meeting the requirements of Appendix D in the International Fire Code.	Agreed. The preliminary plat map reflects the location of the turnaround.
		5. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain access.	Agreed.
		6. Future access onto proposed lots may not be accessed off a county road if there is an alternative road to access from (i.e., proposed Lots 5 & 6 must access from Thorp Landing Lane and not Goodwin Road).	Agreed.
		7. KC will not access private roads for maintenance as a public street or road, until such streets and roads are brought into conformance with current county road standards and formally adopted by KC Board of County Commissioners.	Agreed.
		8. In addition to the above mentioned conditions, all applicable KC Road Standards apply to this proposal. Access is not guaranteed to any existing or created parcel on this application.	Agreed.
		Engineering	
		1. Transportation Concurrency. A Transportation Impact Analysis (TIA) shall be required for all development that will generate more than 9 peak hr trips.	The applicant has discussed this with KCDPW and are in the process per KCDPW guidance.
		Please provide estimated traffic generation for peak hours to determine if a TIA will be required.	The applicant has discussed this with KCDPW and are in the process per KCDPW guidance.
		2. Plat Approval regarding Engineer Signature Block	Agreed. This engineer signature be established.
		3. Newly created lots shall access onto an internal road system and not directly onto a county road.	Agreed. The lots will access Thorp Landing Lane then access a county road.

	Please include a NOTE: that lot access is to be only to the internal private road, and no direct access from an individual lot onto the county road.	Agreed.
	4. Include NOTES a through e.	Agreed.
	5. A grading permit (GP-22-00008) was previously obtained. Please note the expiration date on the grading permit.	GP-22-00008 was issued on July 7, 2022 and per Conditions of Approval #1, this permit expires two years from the date of issuance. See Exhibit #14 of Plat Submittal.
	Survey	
	No survey review performed on this application.	A preliminary plat (survey) was submitted for review as part of the submittal application. It is understood that as part of Final Platting review, the Survey will be reviewed, if that is what this comment is intended to mean.
	Flood	
	In summary of flood comments: all activities within floodplain must be permitted through the floodplain development permit process and follow the regulations within KCC 14.08. 1 through 4 listed items.	Agreed.
	All subdivisions shall show on the face of both the preliminary and final plat the boundary of the 100 yr flood plain and floodway.	Agreed. All floodplain boundaries have been included on the preliminary plat map submitted with the application.
	Water Mitigation/Metering	
	The applicant must provided legal water availability for all new uses on the proposed lots of this project, which can be provided through mitigation certificates.	Agree
	This plat is not eligible for the Kittitas County Water Bank. Mitigation must be provided from a private water bank.	Agree
	Prior to final plat approval and recording conditions 1 thru 3 shall be met in accordance with KCC 13.35.027.	Agree
	1. A letter from a water purveyor stating the purveyor has adequate water rights and will provide the necessary water for the new use.	Agree
	2. An adequate water right for the proposed use; or	Agree
	3. A certificate of water budget neutrality from the Dept. of Ecology or other adequate interest in water rights from a water bank.	Agree
	All applicants of land divisions shall also submit information on proximate parcels held in common ownership as those terms are defined in WAC 173-539A-030 and otherwise demonstrate how the proposed new use will not violate RCW 90.44.050 as currently existing or hereafter amended.	See Exhibit A. Applicant is in the process of obtaining water for this proposal.
	Final Plat Notes required C-1 and C-2	Agreed.

EXHIBIT A TO COMMENT RESPONSE MATRIX RE THORP LANDING

Response to March 1, 2023 Washington State Department of Health Comment:

All domestic water to serve the property which is the subject of this plat application will be withdrawn from two wells. One well has already been classified as a Group B system, and it serves lots not involved with the plat, but which are described as Kittitas County Tax Parcel Nos. 19588, 19589, 19590, 19591, 19592, and 19593. Two of these lots are owned by third parties and they had building permits issued after the current landowner bought a Kittitas County Mitigation Package. The plat will add 10 lots to the above six lots, for a total of 16 lots. Each lot may withdraw 275 gallons per day, so the combined withdrawal of ground water from the property is under 5,000 gallons per day. Because all of the property has irrigation water from the West Side Irrigation Company, there is no need for any outdoor irrigation to occur using ground water. The applicant, through covenants, conditions and restrictions, will restrict individuals acquiring lots within the plat to 275 gallons of water per day with no outdoor use of water. Additionally, *see* responses related to outdoor irrigation below in response to the West Side Irrigation Company's comments.

Response to February 28, 2023 West Side Irrigation Company's Comment:

The applicant is aware of Kittitas County Code §16.18 which sets forth the County requirements and the applicant is aware of the West Side Irrigation Company's rules and regulations regarding delivery of water. The applicant intends to provide two points for all lots within the plat to access water from the West Side Canal. The water will be delivered to each lot in a piped system, with each lot having an irrigation riser which will be metered. Further, through the use of covenants, conditions and restrictions, the applicant will require that the application of all West Side Irrigation Company water to lots within the plat for purposes of irrigation will be required to be through a sprinkler system. No flood irrigation of these lots will be allowed.

Response to March 7, 2023 Comments by the Washington State Department of Ecology:

See response to Washington State Department of Health comments above.

Response to Comments made by the Fudacz Family:

The comment by Mr. Fudacz regarding "numerous natural springs and historical wooden and cement tile drains across many sections of the proposed plat . . ." is an overstatement of Mr. Fudacz and his family's rights to convey irrigation water across this property.

The Fudacz family were claimants in *Ecology v. Acquavella*, Yakima County Superior Court Cause No. 77-2-01484-5. Acquavella was a general water rights adjudication that was commenced to adjudicate the rights of all claimants of surface water (including springs) within the Yakima River Basin. The action was filed in Yakima County, but it covered water rights in Kittitas, Yakima, and Benton Counties. In that case, the Court divided the area within the adjudication into different "subbasins". In each subbasin the water right claimants presented their evidence to a referee appointed by the Court to take evidence and then render a recommendation to the Court on the water rights claims that were filed by each claimant. The Referee's decisions were then presented

to the superior court judge. The individual claimants then had an opportunity to object to the Referee's findings and in most cases the court remanded the objections back to the Referee for the taking of additional evidence or for the processing of additional argument. Then the Referee would issue a second report, often referred to as a "Supplemental Report of the Referee". The Court then typically entered a Conditional Final Order which adopted the Report of the Referee and the Supplemental Report of the Referee.

The Fudacz family were claimants in Acquavella, and annexed hereto as Exhibit A-1, is a true and correct copy of the Report of the Referee for Subbasin 8 (Thorp) and related materials. The Exhibit, which attaches a copy of the Report of the Referee, identifies the background information that the Referee relied upon in making decisions on the Fudacz's water rights.

Of special note in that background section is Section 7 "Special Issues Specifically Return Flows" (Exhibit A-1, page 5) that provides that while a party can obtain a right in return flows, it must meet the general qualifications of a water right, including having a Chapter 90.14 claim form supporting the use of the water rights. Chapter 90.14 claim forms were forms that landowners were required to file under Chapter 90.14 RCW prior to 1974. If a water right claimant failed to file a 90.14 claim form, then in Acquavella they did not receive a water right.

The Report of the Referee at page 74 discusses the Fudacz's water rights. It specifically says that the claimants make use of return flow waters or tail waters which are defined as return flows. However, the Referee concludes that no rights can be acquired in those return flows because the Fudaczes did not file 90.14 claim forms. Instead, the Fudaczes were awarded three water rights which ultimately became certificates at the conclusion of Acquavella, specifically, Certificate S4-83993-J, Certificate S4-83971-J, and Certificate S4-83948-J, (attached as Exhibit A-2). That is the sum total of the water rights that the Fudaczes have which flow across the applicant's property. The points of diversion of those three water rights are identified on the attached Exhibit A-3.

In addition, the Fudaczes have three easements which burden the property. One which is identified on the face of the proposed plat which runs across the Northeast corner of Lot 6, the Northeasterly portion of Lot 7 (within the flood zone), and across the Northeasterly corner of Lot 8. The other easements relate to a pipeline or drain that appears to gather the water collected from the four diversion points and distribute the water underground to a riser at the northeasterly intersection of Lots 8 and 9. The Fudaczes have no other rights to use any water that crosses or originates on the applicant's property. The diversion points of the Fudacz's water rights will be identified on the face of the plat and through restrictive covenants, the applicant will prevent soil disturbance and development in the vicinity of these diversion points.

Portions of the Fudacz's comments are not comments on the plat, and one is intended to denigrate the applicant and will not be responded to. The applicant has provided accurate information to both the County and to the Hearings Examiner in support of its plat application.

The applicant understands the rules and regulations relating to wetland and stream critical areas. The applicant submitted a report from a critical areas expert and intends to adhere to that report and County law. The applicant has no obligation to highlight "perennial springs" throughout the

property dating back to 1913. In fact, the Fudaczes have no rights to utilize any spring on the property other than the rights identified above and referenced at Exhibit A-2.

The Fudaczes also assert that the critical areas report was “sub par”. If the Fudaczes think the critical areas report is “sub par”, they fail to identify why the critical areas report was “sub par” and they fail to produce their own critical areas report. The photographs the Fudaczes produced are useless to the applicant, the County, and the Hearing’s Examiner because they are taken out of context and fail to demonstrate anything. The Fudaczes as a neighbor have historically been opposed to any activity which results in additional individuals moving to the area and/or houses being built in the vicinity of their property.

The Fudacz’s assert “an adequate and/or proper Eastern Washington Wetland Rating was not given, thus not identifying proper setback and buffer zones associated with wetland areas”. They then reference a wetland within the Goodwin Road County Right-of-Way. This is basically the road side ditch. The applicant commissioned a Critical Area Report (See Exhibit 12 of the application submittal) which identifies this wetland within the county right-of-way. Even though this wetland is within the county right-of-way, the Critical Area consultant reviewed this wetland in accordance with Kittitas County Code and established the appropriate buffers consistent with the county code. At the same time on the GIS mapping system of the county you will see a wetland identified within the old Railroad right-of-way and Thorp Depot Road. This wetland is off the property but there is a tail water ditch that travels along and crosses Parcel 19591 (not part of this proposed plat application) and crosses Thorp Landing Road and crossing other existing parcels eventually crossing the Thorp Hwy. Per Exhibit 12 of the plat submittal (Critical Area Report), Section 4.4 Irrigation regime Pg. 7 identifies this tail water section as a tail water ditch. Therefore, wetlands were identified off-site and not on the proposed Plat.

The Fudaczes also reference an additional spring, but it appears that this spring is no longer used and is therefore no longer an issue.

The Fudaczes allude to the applicant’s potential or intended interference or potential interference with their water rights. The applicant does not assert that it has a right to use any spring that forms the basis of the Fudacz’s water rights and the applicant does not intend to interfere with Fudacz’s water rights. The Fudacz’s rights are limited as discussed above, and all of the irrigation water that will be used on the applicant’s property will be delivered underground through a pipe system and be obtained from the West Side Irrigation Company. The Fudaczes cite to RCW 90.03.410, which is a provision of the water code that rarely is, if ever, used by any jurisdiction. It provides that willful, meaning intentional, interference to a dam, dike, headgate, weir, canal or reservoir, flume, or other structure or appliance for the diversion, carriage, storage, apportionment, or measurement of water for irrigation, is guilty of a misdemeanor. As stated above, the applicant does not claim the right to use any of the springs that feed the Fudacz’s water rights. Irrigation water will be delivered to the lots from the West Side Irrigation Company, and will be delivered through a piped system. Through the use of restrictive covenants, no lot will have the ability to apply irrigation water to the property except West Side Irrigation Company water that the lot is entitled to through the West Side Irrigation Company and the system the applicant will construct,

which complies with Kittitas County Code and the West Side Irrigation Company's rules and regulations.

Response to Comments Received by Ms. Thompson:

Ms. Thompson raises an issue with the 2022 Comprehensive Plan SEPA checklist that she alleges was inadequate. Ms. Thompson is referring to the applicant's 2022 request to Kittitas County to change the comprehensive plan designation of the property which is subject to this plat and to rezone the property to 5 acre density. Ms. Thompson was opposed to that request but did not file a challenge to the SEPA checklist or to the SEPA determination issued by Kittitas County as a result of that application. The County approved the comprehensive plan change and the rezone of the property. Ms. Thompson has now filed a petition to the Eastern Washington Growth Management Hearings Board challenging the County's decision. The outcome of that decision does not affect this plat application because under clear and unambiguous Washington law, this application is vested to the 5 acre zoning.

The vested rights doctrine started as a common law doctrine under which a land use application, under proper conditions, would be considered only under the land use statutes and ordinances in effect at the time of the application's submission. *Friends of the Law v. King County*, 123 Wn.2d 518, 522, 869 P.2d 1056 (1994). Common law vesting no longer exists in Washington and the vested rights doctrine is now only statutory. In *Potala Village Kirkland LLC v. Kirkland*, 183 Wn.App. 191, 334 P.3d. 1143 (2014) the Washington Court of Appeals held that the statutory vested rights doctrine, which applies only to building permits and plat applications, did not supplement common law vesting. *Id.* at 203. Instead, the court found statutory vesting replaced common law vesting. *Id.* at 203; see also, *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 322 P.3d 1219 (2014). In addition to statutory vesting in RCW 58.17.033 and RCW 19.27.095, local governments may also enact vesting ordinances. *Erickson & Associates, Inc. v. McLerran*, 123 Wn.2d 864, 872-73, 872 P.2d 1090 (1994).

Kittitas County has adopted Chapter 15A of the Kittitas County Code, which defines how all land use development applications filed in the County are processed. Title 15A.02.080 defines a project permit application. Chapter 15A.03 establishes the process the County follows in processing applications. KCC 15A.03.030 defines what must be in an application for it to be processed. KCC 15A.03.040 defines the process for determining when an application is complete so that it can be processed. In Kittitas County plat (short or long) applications vest as of the date the application is complete. That application was deemed complete on February 7, 2023, and is therefore vested as of February 7, 2023.

Consistent with the above vesting law, the Washington State Legislature (within the Growth Management Act) adopted RCW 36.70A.302. This statute specifies what the Eastern Washington Growth Management Hearings Board can do if it determines that part or all of the Comprehensive Planned Development Regulations subject to the appeal are invalid. RCW 36.70A.302(2) provides as follows:

A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt

of the board's order by the county or city or to related construction permits for that project.

Thus, because this application vested when the County deemed the plat application complete, the Eastern Washington Growth Management Hearings Board's decision in the underlying Growth Management Act appeal filed by Ms. Thompson, Mr. Fudacz, and Mr. Boitano does not affect this plat application.

Supplemental Response to Comments by the Kittitas County Health Department:

The applicant contacted Holly Erdman at the Kittitas County Health Department regarding the public health comment. In discussions with Ms. Erdman, it is clear that the heading of her comment referencing the Conner Short Plat and the date of the comment are incorrect; however, the applicant was able to confirm that the substance of Ms. Erdman's comments on behalf of Kittitas County Public Health did in fact relate to this plat application. The applicant understands and agrees to her comments. Specifically, the applicant understands that prior to final plat approval, the applicant will have to comply with KCC 13.35.027, by providing a certificate of water budget neutrality or other adequate interest in water rights from a water bank.

EXHIBIT A-1

**YAKIMA RIVER BASIN
WATER RIGHTS ADJUDICATION**

The State of Washington, Department of Ecology v.
James J. Acquavella, et al.
Yakima County Superior Court Cause No. 77-2-01484-5

REPORT OF REFEREE

**RE: SUBBASIN NO. 8
(THORP)**

Submitted to:
The Honorable Walter A. Stauffacher
Yakima County Superior Court

REPORT OF REFEREE - VOLUME 19

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF YAKIMA

3 IN THE MATTER OF THE DETERMINATION)
4 OF THE RIGHTS TO THE USE OF THE)
5 SURFACE WATERS OF THE YAKIMA RIVER)
6 DRAINAGE BASIN, IN ACCORDANCE WITH)
7 THE PROVISIONS OF CHAPTER 90.03,)

No. 77-2-01484-5

8 THE STATE OF WASHINGTON,)
9 DEPARTMENT OF ECOLOGY,)

REPORT OF REFEREE
Re: Subbasin No. 8
(Thorp)

10 Plaintiff,)

11 v.)

12 JAMES J. ACQUAVELLA, et. al.,)

13 Defendants.)
14

15 To the Honorable Judge of the above-entitled Court, the following report is
16 respectfully submitted:

17 I. BACKGROUND

18 This report concerns the determination of a portion of the surface water
19 rights of the Yakima River Drainage Basin, specifically those rights located
20 within Subbasin No. 8 (Thorp). The criteria used by the Referee in the
21 evaluation of claims in this subbasin, consisting of applicable law and bases for
22 water right determinations, can be found in the Report of the Referee to the
23 Court, Preface to Subbasin and Major Category Reports, Volume 2, dated May 18,
24 1988.

25 Evidentiary hearings were conducted by the Referee on December 6, 7, 8 and
26 9, 1989.

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II. FIELD INVESTIGATIONS

Field surveys were conducted by the Department of Ecology staff during 1987 and 1988 to obtain information on existing water use patterns in Subbasin No. 8 for use in the adjudication proceedings. Ditches, pipelines, pumps and wells were located and mapped. Map exhibits were prepared to show all pertinent features. Aerial photographs and topographic maps of the area in addition to county assessor's plats were utilized in conjunction with on-site field investigation.

III. WATER DUTY

The Plaintiff did not provide expert testimony on water duty for this subbasin, but did identify Washington State University's circular entitled "Irrigation Requirements for Washington--Estimates and Methodology", as being previously submitted into evidence. Individual claimants and their witnesses provided testimony on water use. As much as possible, the Referee proposes to rely on the testimony of the witnesses appearing on behalf of the individual claimants.

The maximum duty of water for the various uses in Subbasin No. 8 will be calculated by the Referee, in the absence of definitive testimony or other evidence, according to the following formulae:

- A. Domestic supply and lawn and garden up to
1/4 acre.....0.02 cfs; 2 acre-feet per
year
- Stock water.....1 acre-foot per year
(diversion)

B. Irrigation Water -- The Referee reviewed testimony and evidence submitted in an adjoining subbasin, Subbasin No. 6 (Taneum), which is located

1 north of the Thorp subbasin. Subbasin No. 6 had a water purveyor, the Taneum
2 Ditch Company, that set forth through expert testimony, the general water duty of
3 6.6 acre-feet per year per acre irrigated needed from their primary sources of
4 water. Although the source of water for the Taneum Ditch Company is Taneum Creek
5 located in Subbasin No. 6, the service area (or place of use) lies predominately
6 within Subbasin No. 8. The Referee will utilize the water duty of 6.6 acre-feet
7 per year per acre irrigated when testimony is not provided for historic use.

8 The maximum rate of diversion or withdrawal will be calculated on the basis
9 of 1.0 cubic foot per second (449 gallons per minute) for each 50 acres of
10 irrigation, irrespective of the type of crop. Therefore, for each irrigated
11 acre, the Referee calculates the maximum instantaneous rate of diversion to be
12 0.02 cubic foot per second (9 gallons per minute). It is the opinion of the
13 Referee that the aforementioned duty of water is a reasonable maximum application
14 rate for the soil and topographic conditions in Subbasin No. 8. These volumes
15 and rates of water application will be employed by the Referee when quantitative
16 evidence of the rate and volume of a right was neither submitted nor made clear
17 during testimony.

18 IV. STIPULATIONS

19 Three stipulations were adopted during the hearing, among all claimants and
20 their counsel. The first stipulation concerns the use of exhibits and testimony
21 and reads as follows:
22

23 It is hereby stipulated by all claimants in the above-entitled cause that
24 all exhibits entered and all testimony taken at the hearing on claims held
25 beginning December 6, 1989, may be utilized by any party in the proof of a
26 claim or the contesting of a claim whenever relevant and material.

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1 The second is a stipulation by the parties in relation to the description
2 of properties identified in the claims of the defendants to this action, and
3 reads as follows:

4 It is hereby stipulated that the description of lands set forth in the
5 claims of the respective claimants is the correct description of the lands
6 for which the water right is claimed and that such claim will constitute
7 proof of the ownership thereof in the absence of a contest as to such
8 title.

9 In the third, the parties stipulated to the following in relation to "non-
10 diversionary" stock and wildlife watering use with regards to Subbasin No. 8:

11 1. Waters in natural watercourses in the subbasin shall be retained when
12 naturally available, an amount not to exceed 0.25 cubic feet per second
13 (cfs), for stock water uses in such watercourses as they flow across or are
14 adjacent to lands, which are now used as pasture or range for livestock.
15 Retention of such water shall be deemed senior (or first) in priority,
16 regardless of other rights confirmed in this cause. Regulations of these
17 watercourses by the plaintiff shall be consistent with such retention
18 requirements.

19 2. Waters in natural watercourses in the subbasin shall be retained when
20 naturally available, an amount not to exceed 0.25 cubic feet per second
21 (cfs), for wildlife watering uses in such watercourses as they flow across
22 or are adjacent to lands, which are now used as pasture or range for
23 wildlife. Retention of such water shall be deemed senior (or first) in
24 priority, regardless of other rights confirmed in this cause. Regulations
25 of these watercourses by the plaintiff shall be consistent with such
26 retention requirements.

27 3. Waters in naturally occurring ponds and springs (with no surface
28 connection to a stream) in the subbasin shall be retained for stock water
29 uses, when such ponds and springs are located on or adjacent to lands which
are now used as pasture or range for livestock. Said uses embody
entitlements to a level in the water bodies sufficient to provide water for
animals drinking directly therefrom while ranging on riparian lands, and
with the same priority as provided in paragraph 1. Regulation of the ponds
and springs by the plaintiff shall be consistent with such retention
requirements.

4. Waters in naturally occurring ponds and springs (with no surface
connection to a stream) in the subbasin shall be retained for wildlife
watering uses, when such ponds and springs are located on or adjacent to
lands which are now used as pasture or range for wildlife. Said uses
embody entitlements to a level in the water bodies sufficient to provide
water for wildlife drinking directly therefrom while ranging on riparian
lands, and with the same priority as provided in paragraph 2. Regulation

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1 of the ponds and springs by the plaintiff shall be consistent with such
2 retention requirements.

3 5. Nothing in this stipulation mandates that any lands, associated with
4 water rights or water retention as provided herein, shall be reserved for
5 wildlife purposes.

6 V. LAND DESCRIPTIONS

7 The Referee has chosen, in the interest of minimizing future controversy
8 and confusion, to reduce legal descriptions of properties relating to confirmed
9 rights to the smallest reasonable legal subdivision in which are contained the
10 actual places of use. It is believed that the basic integrity of the right will
11 not only be preserved, but strengthened by this measure.

12 VII. SPECIAL ISSUES

13 Return Flows

14 Many of the defendants in this subbasin are asserting rights to the use of
15 return flow waters. The Court has used the definition of "return flows"
16 contained in 2 Hutchins, Water Right Laws in the Nineteen Western States (1974),
17 page 568 as follows: "'Return flow' is water diverted for irrigation or other
18 use that returns to the stream from which it is diverted, or to some other
19 stream, or that would do so if not intercepted by some obstacle."

20 The Court considers return flow waters to include waste water and seepage
21 water. The defendants who are claiming return flow waters lie below the Kittitas
22 Reclamation District canal. The contract between the United States and the
23 Kittitas Reclamation District specifically addresses return flow waters within
24 the reclamation district boundaries as follows:

25 34. (a) The United States does not abandon or relinquish any of the
26 waste, seepage or return flow-waters attributable to the irrigation of the
27 lands to which water is supplied under this contract. All such waters are
28 reserved and intended to be retained for the use and benefit of the United
29 States as a source of supply for the project.

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1 (b) If suitable drainage or return-flow water from any part of the
2 project shall at any time be or become available at points where it can be
used on lands within the District, the United States may supply such water
as a part of the supply to which the lands in the District are entitled.

3 Therefore, return flow waters that originate from the Kittitas Reclamation
4 District (KRD) system may be considered by the United States to be part of the
5 water to which district lands are entitled, or part of the four acre-feet per
6 acre that is delivered by KRD to district patrons.

7 Additionally, in a recent Washington State Supreme Court case, State of
8 Washington, D.O.E. v. U.S. Bureau of Reclamation, et al., 118 Wn.2d 761, 827 P.2d
9 275 (1992), the Supreme Court held that the appropriator of the water retains its
10 rights to use the water so long as the water remains within the boundaries of the
11 appropriator's property and that only Federal agencies and those entities with
12 whom they contract have authority to make decision regarding the distribution of
13 water within a Federal irrigation project. The Supreme Court found that the
14 Federal government, through the Bureau of Reclamation, was the appropriator of
15 water in a Federal project and had control of the water until it left the project
16 boundaries.

17 Additionally, the return flow water derived from irrigation practices using
18 water from the Kittitas Reclamation District, the West Side Irrigating Company,
19 Taneum Canal Company and the Menastash Water Ditch Company canals or seepage from
20 the canals would be foreign return flows as the water in these canals is diverted
21 from the Yakima River outside Subbasin No. 8, Taneum Creek or Manastash Creek,
22 also outside of Subbasin No. 8. The Washington State Court of Appeals has held
23 in the case of Dodge v. Ellensburg Water Co., 46 Wn App. 77, 82, 729 P.2d 631
24 (1986), that ". . . no water rights, prescriptive or otherwise, exist in these
25 waters." In a much earlier case, Elgin v. Weatherstone, 123 Wash. 429, 212 P.

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1 562 (1923), the Washington Supreme Court ruled that foreign waters are of a
2 vagrant or fugitive nature and may be used by the first person who can take them
3 from the stream where they are found. The ruling also found that the fact that a
4 riparian owner was first to appropriate vagrant surplus waters in a creek did not
5 give him the exclusive right to take it the next year.

6 The above cited cases lead the Referee to conclude that rights cannot be
7 confirmed for the use of return flow waters that originate from the application
8 of water from either the Kittitas Reclamation District, the West Side Irrigating
9 Company, the Taneum Canal Company or the Manastash Water Ditch Association,
10 canals, or seepage from those canals. Therefore, the only possible rights to
11 return flow waters that could be confirmed in the Thorp Subbasin would be return
12 flows resulting solely from the use of surface waters originating within the
13 subbasin, such as Fogey Creek. In order for the Referee to recommend that rights
14 be confirmed for use of return flow waters, the defendants would need to present
15 evidence to show that the return flows originated from use of creek(s) water, not
16 Yakima Project water or foreign return flows; evidence of the quantity of return
17 flow water used; historic use of the water; and the legal foundation for the
18 water use. Without that specific testimony, the Referee cannot recommend
19 confirmation of rights for use of return flow water.

21 VI. WATER RIGHT PRIORITIES

22 When the testimony and evidence leading to a confirmed right is no more
23 specific with respect to the priority date than the year, the Referee has elected
24 to use the 30th of June as representing a midpoint of that particular year. In
25 those cases when the priority to be confirmed is not more specific than the
26

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1 month, the last day of that month will be used. This has been done in the
2 interest of consistency and compatibility with other rights.

3
4 VIII. TESTIMONY AND REFEREE'S ANALYSES

5 Plaintiff Testimony

6 The Plaintiff State of Washington, Department of Ecology, was represented
7 by Mr. Charles B. Roe and Ms. Ceil Buddeke, Assistant Attorneys General.

8 The State introduced into evidence the following generic exhibits:

<u>NUMBER</u>	<u>DESCRIPTION</u>
9 SE-1	Map -- Subbasin No. 8--Inset A.
10 SE-2	Map -- Subbasin No. 8.
11 SE-3	Water Right Certificates, Permits, Surface Water Claims 12 RE: Subbasin No. 8.
13 SE-4	Investigation Reports for the Claimants in Subbasin No. 8

14 Additionally, oral testimony was given by Mr. Clay Keown, Field
15 Investigator, Ecology Adjudication Section.

16 Claimant Testimony

17 Seventy-three defendants filed statements of claim or notices of appearance.
18 All claimants and their legal counsel, if so represented, are as follows:

<u>Court Claim No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
19 2266	William Bews, Jr. 20 Rt. 1 Box 375 21 Ellensburg, WA 98926	Kenneth D. Beckley 22 P. O. Box 858 23 Ellensburg, WA 98926	19, 149
24 1722	Dale K. & Jewel E. Black 25 Rt. 1 Box 415 26 Ellensburg, WA 98926	Hugh M. Spall 27 P. O. Box 831 28 Ellensburg, WA 98926	24, 149

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1 COURT CLAIM NO. 4817 & 4942 - David W. and Lyla M. Fudacz
2 COURT CLAIM NO. 4818 - Larry T. Fudacz

3 Late Statements of Claim and supplemental claims were filed by the Fudaczs
4 for use of water from three unnamed springs and return flows for irrigation and
5 stock water supply. The claimants were represented by James Hurson, attorney.
6 David Fudacz testified at the evidentiary hearing on behalf of both claims.

7 The properties in question utilize the same sources of water and
8 distribution system, and operate as a unit. Spring and return flow waters
9 originate at two points, identified as "A" and "B" on the Fudacz exhibit map (DE
10 92). Based on the aerial photo, the springs emerge within a 100 foot area in the
11 SW~~1/4~~NW~~1/4~~SE~~1/4~~ of Section 11, although additional springs breakout all along the
12 railroad tract area. The springs feed concrete underground lines conveying water
13 to a point ("C") located at the southern most portion of the David and Lyla
14 Fudacz property approximately 800 feet south and 1,320 feet west from the east
15 quarter corner of Section 11, T. 18 N., R. 17 E.W.M.. The water is transported
16 to their property to irrigate 7.71 acres of timothy hay. This same system also
17 conveys water to Larry Fudacz's property for irrigation of 24.41 acres of timothy
18 hay and row crops. They pasture up to 180 sheep and several horses and cattle.
19 Surface methods are still the predominate method of application of water through
20 both concrete and earthen ditches and plastic and concrete pipes. Both farms
21 benefit from return flow when their neighbor, Andrew Dyk, irrigates his property.

22 David and Lyla Fudacz also have 4.12 acres which received water primarily
23 from the West Side Irrigating Company and waste water from a ditch along Goodwin
24 Road. Within the last few years, the claimants obtained an easement from their
25 neighbors the Leavitts, and recently began taking delivery of water from the West
26 Side Irrigating Company for the other 24.41 acre parcel. The West Side

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1 Irrigating Company is a Major Claimant in these proceedings. Their claim will be
2 addressed through the Major Claimant pathway.

3 Three patents have issued each describing a portion of the property the
4 Fudaczes own. The Northern Pacific Railroad received a patent dated May 31,
5 1870, for several hundred acres, including the E~~NE~~ and the NE~~SE~~ of Section
6 11. A patent issued to Rueben Pardee dated February 28, 1897, which in part
7 described the NW~~SE~~ and the NE~~SW~~ of Section 11. The David and Lyla Fudacz
8 property lies within the above described patented land. A patent issued to
9 Alanson J. Mason dated September 29, 1888, and included the S~~SE~~ of Section 11
10 wherein lies Larry Fudacz's property.

11 This general area was developed and irrigated beginning in the late 1800's,
12 as testified to, not only by Mr. Fudacz, but by other claimants in these
13 proceedings. In the early 1900's, the claimants' springs were the subject of
14 litigation between Ruth Mason and John Yearwood/John Newman, et al. Mr. Yearwood
15 had enlarged the spring channels on his property to convey the accumulating
16 spring water off his property and to John Newman. The channelling work affected
17 the flow of water onto the Mason property. The final opinion issued in June
18 1919, resulting in Ms. Mason being entitled to use 10 miners inches under 4 inch
19 pressure (0.2 cubic feet per second) from the springs for irrigation, domestic
20 supply and stock water. The Yearwood and Newman uses were acknowledged, but
21 there was no quantification of those uses. The Fudaczes own a portion of
22 Yearwood and Newman properties.

23 The claimants make use of waste waters or tailwaters, which are defined as
24 return flows. Although a right to use of natural return flows can be confirmed
25 if historically used and quantified, and with the appropriate water right
26 documentation, those flows imported into the subbasin are considered foreign

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1 return flows and are not subject to allocation. See the Special Issues Section
2 of this report beginning on page 5.

3 Two 90.14 RCW water right claims were filed which appear to describe the
4 Fudacz property. Claim No. 121941 was filed for use of water from a drain ditch
5 on the south side of Goodwin Road for irrigation of lawn and garden and stock
6 water supply. Since the "short form" was used, no specific point of diversion,
7 quantities or date of first use was given. Use of the "short form" under RCW
8 90.14 was for asserting a right to water for the purposes described in the Ground
9 Water Code's exemption to the permit process (Section 90.44.050 RCW) which are
10 domestic supply, stock watering, irrigation of up to one-half acre of lawn and
11 non-commercial garden, and industrial supply as long as less than 5,000 gallons
12 per day is being used. Use of the short form waived any right that may have
13 existed in excess of those quantities and uses.

14 Under Claim No. 121943, 10 gallons per minute (gpm), 0.5 acre-foot per year
15 was claimed from a spring for continuous stock water. No point of diversion was
16 given. Claim No 121943 preserves a right to use of the spring for stock water
17 only. The place of use described in these two claims was "All that portion of
18 the NE*SW* and NW*SE* of Section 11, lying north and east of the Chicago,
19 Milwaukee, and St. Paul Railroad". Only a portion of the David and Linda Fudacz
20 land falls within the described place of use--the 4.12 acre parcel on which only
21 water from the West Side Irrigating Co. and a waste water ditch are used for
22 irrigation. The spring is used for stock water supply.

23 The Referee recommends that a right be confirmed to David W. and Lyla M.
24 Fudacz under Court Claim No. 04817, under the Riparian Doctrine, with a priority
25 date of February 28, 1897, for 0.02 cfs and 2 acre-feet per year for continuous
26 stock water supply from the spring area. The springs are located within the

27 REPORT OF REFEREE
28 Re: Subbasin No. 8

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1 following points of diversion: "A" is located approximately 1,500 feet north and
2 200 feet east from the south quarter corner of Section 11; and "B" is located
3 approximately 1,400 feet north and 200 feet east from the south quarter corner of
4 Section 11; both being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 18 N., R. 17 E.W.M.

5 Due to the lack of a RCW 90.14 claim for irrigation and lack of testimony
6 about the nature of the return flow waters being used, the Referee cannot
7 recommend confirmation of an irrigation right under either Court Claim No. 4817
8 or 4818.

9
10 COURT CLAIM NO. 1810 - Ben F. and Nina M. George

11 The Claimants filed a Statement of Claim asserting a right to use water
12 from an unnamed spring for irrigation and stock water. Mr. George testified at
13 the evidentiary hearing on behalf of their claim.

14 The subject property has been in the George family since 1928. The Georges
15 own the SE $\frac{1}{4}$ of Section 3 and the NE $\frac{1}{4}$ of Section 10, T. 18 N., R. 17 E.W.M. and
16 are entitled to water from both the Taneum Canal Company and the Kittitas
17 Reclamation District (KRD). The portion of their property receiving water from
18 the unnamed spring is located within the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, lying east of the
19 Thorp Mill Ditch. This property does not benefit from water delivered through
20 either the Taneum ditch or KRD. The State's Investigation Report identified this
21 property having West Side Irrigating Company water appurtenant to it; however,
22 Mr. George testified that he does not convey West Side water to this acreage.

23 Approximately 12 acres are irrigated from the unnamed spring. Water is
24 diverted from a point located approximately 800 feet south and 900 feet west from
25 the east quarter corner of Section 3, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3.
26 These springs originate east of the West Side canal and, although they flow

27 REPORT OF REFEREE
28 Re: Subbasin No. 8

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1 CLAIMANT NAME: David W. and Lyla M. Fudacz COURT CLAIM NO. 4817

2 Source: Two unnamed springs

3 Use: Stock water

4 Period of Use: Continuous

5 Quantity: 0.02 cubic foot per second, 2 acre-feet per year

6 Priority Date: February 28, 1897

7 Point of Diversion: 1. 1,500 feet north and 200 feet east from the south
8 quarter corner of Section 11;
9 2. 1,400 feet north and 200 feet east from the south
10 quarter corner of Section 11; both being within the
11 NW~~SE~~ of Section 11, T. 18 N., R. 17 E.W.M.

12 Place of Use: That portion of the E~~W~~ of Section 11, T. 18 N.,
13 R. 17 E.W.M. described as follows: Beginning at the east
14 quarter corner of Section 11; thence N 89°19'11" W
15 1,329.81 feet to a point which is the approximate center
16 of Goodwin Road; thence S 00°17'19" 20 feet to the south
17 right of way boundary of said county road and the true
18 point of beginning; thence S 00°17'19" W 187 feet; thence
19 N 89°19'11" W parallel with the south right of way of
20 said county road 820.19 feet; thence N 73°03'37" 164.29
21 feet; thence N 00°27'51" 131.02 feet; thence continuing N
22 00°27'51" W 10 feet to a point on the south right of way
23 of said county road; thence S 89°19'11" E on said road
24 right of way 979.45 feet to the true point of beginning.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 8

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**YAKIMA RIVER BASIN
WATER RIGHTS ADJUDICATION**

The State of Washington, Department of Ecology v.
James J. Acquavella, et al.
Yakima County Superior Court Cause No. 77-2-01484-5

**SUPPLEMENTAL
REPORT OF REFEREE**

**Re: SUBBASIN NO. 8
(THORP)**

Submitted to:
The Honorable Walter A. Stauffacher
Yakima County Superior Court

REPORT OF REFEREE - VOLUME 19A

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF YAKIMA

3 IN THE MATTER OF THE DETERMINATION)
4 OF THE RIGHTS TO THE USE OF THE)
5 SURFACE WATERS OF THE YAKIMA RIVER)
6 DRAINAGE BASIN, IN ACCORDANCE WITH)
7 THE PROVISIONS OF CHAPTER 90.03,)

8 THE STATE OF WASHINGTON,)
9 DEPARTMENT OF ECOLOGY,)

10 Plaintiff,)

11 v.)

12 James J. Acquavella, et al.,)

13 Defendants.)

No. 77-2-01484-5

REPORT OF REFEREE
PURSUANT TO ORDER ON
EXCEPTIONS OF
MARCH 9, 1995

14 To the Honorable Judge of the above-entitled Court, the following report is
15 respectfully submitted:

16 The Order issued by the court on the March 9, 1995, ruled upon several
17 exceptions to the Report of Referee and remanded certain exceptions to the Referee,
18 with instructions, for further evaluation and subsequent recommendations to the
19 Court.

20 The claims remanded to the Referee are identified as follows:

21 Harold E. Chamberlin and Sherry A. Chamberlin, Claim No. 02316

22 Gerald D. Detwiler and Carol L. Detwiler, Claim No. 02074

23 Douglas A. Dicken, Claim No. 01722

24 David W. Fudacz and Lyla M. Fudacz, Claim No. 04817

25 Larry T. Fudacz, Claim No. 04818

26 Elwin Gibson and Patricia Gibson and Irwin Loucks and Dorothy Loucks,
27 Claim No. 02046

28 Charles Gust, Claim No. 01560

SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 8

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- 1 Ivan Hutchinson and Mildred Hutchinson, Claim No. 00876
- 2 James Ogden, Claim No. 01961
- 3 Robert F. Lapen and Linda L. Lapen, Claim No. 01446
- 4 Vernon G. Meyer and Ellen F. Meyer, Claim No. 01875
- 5 Murray Pacific Corporation and Roger C. Sparks and Rita M. Sparks and
- 6 Dale Dyk and Bart G. Bland and Dave Duncan & Sons and James V. Leishman
- and Duncan Family Trust and Douglas A. Dicken, Claim No. 00931
- 7 Packwood Canal Company, Inc., Claim No. 00785
- 8 Gene Panattoni and Sally Panattoni, Claim No. 01208
- 9 Peoples National Bank of Washington, Claim No. 00738
- 10 Theiline P. Scheumann, Claim No. 01335
- 11 Randell Shannon and Tresa Shannon, Claim No. 01809
- 12 Virginia Anderson, Claim No. 00500
- 13 Thorp Town Ditch Association, Claim No. 00725
- 14 Larry O. Hillis and Veralene Hillis, Claim No. 01705
- 15 Wynn Vickerman, Claim No. 00596
- 16 Norma Jean Wilcox, Claim No. 01971
- 17 Willowbrook Farms Ltd. Partnership, Claim No. 00520
- 18 3 Bar G Ranch, Inc., Claim No. 02068

19 Ecology's exception to the annual quantity of water recommended for
 20 confirmation to Richard O. and Rita Hutchinson, Claim No. 00877 and Ecology's
 21 exception asking for a definition of the term "supplemental" as used by the Referee
 22 and the Court were denied by the Court.

23 On February 10, 1995, the Court entered a Memorandum Opinion Re: RCW 90.14
 24 and Substantial Compliance, incorporating the Court's earlier oral ruling

1 concerning substantial compliance. Exceptions making substantial compliance with
2 RCW 90.14 arguments filed by the following claimants were denied by the Court:

- 3 1. Claim No. 02068, 3 Bar G Ranch
- 4 2. Claim No. 00932 & 17500, Dave Duncan, et al.
- 5 3. Claim No. 04817, 04818, 04942, Larry, David & Lyla Fudacz
- 6 4. Claim No. 02046, Claude & Lillian Gibson, Elwin & Patricia Gibson, Erwin
& Dorothy Loukes
- 7 5. Claim No. 00829, Ronald & Margaret McMillian
- 8 6. Claim No. 01809, Randell & Teresa Shannon

9 On July 19, 1995, the Court entered a Memorandum Opinion Re: Priority Date -
10 Date of Patent or Date of Entry addressing the proof needed to establish priority
11 dates. The Referee will look to that opinion when considering evidence presented
12 concerning priority dates. The claimants who filed exceptions specifically on
13 priority date were Dale & Jewel Black (now Dickens), Claim No. 01722; Harold &
14 Sherry Chamberlin, Claim No. 02316; Larry & Veralene Hillis, Claim No. 00894, 01705
15 & 01204; and Willowbrook Farms, Claim No. 00520. Additionally, the Court entered a
16 Memorandum Opinion on January 31, 1995, related to the exceptions filed by
17 Grousemont Farms, Ivan and Mildred Hutchinson and Vernon and Ellen Meyer. That
18 opinion guided the Referee in addressing those exceptions later in this report.

19 Hearings, for the purpose of opening the record for testimony and evidence
20 relating to the exceptions, were conducted by the Referee beginning on June 5,
21 1995. The Department of Ecology was represented by Assistant Attorney General Jo
22 Messex Casey.

23 COURT CLAIM NO. 00500 -- Virginia Anderson

24 Court Claim No. 00500 was filed jointly by Arthur G. Thayer and John J. Thayer
25 who did not appear at the original evidentiary hearing because of John Thayer's
26 death and Arthur's poor health. Margaret A. Thayer, a sister, succeeded to the

27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 8

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1 ambiguous on its face and that the described point of diversion is indeed located
2 on Hatfield Canyon Creek. Therefore, the Referee's conclusion that no water right
3 claim was filed on the unnamed stream should be affirmed.

4 Mr. Burrue1 filed WRC No. 121389 on a short form claiming ground water as a
5 source for a domestic supply. Mr. Black did not appear to provide testimony
6 supporting his contention that Mr. Burrue1 made an error in distinguishing the
7 source as ground water, rather than surface water. Although Mr. Spall suggests
8 that no well exists on the Black property, the record is silent in that regard.
9 Mr. Black did testify that water from the smaller spring is used at the house and
10 barn, but provided no historic use or quantification testimony regarding that use.
11 Lacking that clarifying testimony, the Referee concludes that WRC No. 121389 has
12 not been established as being a filing on the house spring. Further, there is no
13 record upon which a right could be quantified even if a water right claim had been
14 filed. The original finding of the Referee should stand and a right not be
15 confirmed under Court Claim No. 01722.

16
17 COURT CLAIM NO. 04817 -- David W. Fudacz
(A)04942 & Lyla M. Fudacz

18 COURT CLAIM NO. 04818 -- Larry T. Fudacz

19 Attorney Richard T. Cole filed exceptions for David Fudacz relative to the
20 Report of Referee for Subbasin No. 8 (Thorp). The exceptions relate to the
21 findings of the Referee that all irrigation water rights associated with Court
22 Claims 04817, 04818 and 04942 were waived and relinquished due to deficiencies in
23 filing of Water Right Claims (WRC) as prescribed by RCW 90.14. The Court denied
24 the claimant's substantial compliance arguments and their attempts to amend their
25

26
27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. B

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1 RCW 90.14 claim through their exceptions, see the Court's Order On Exceptions for
2 Subbasin No. 8 (Thorp) dated March 9, 1995.

3 Although the Court did not specifically refer the question of priority date to
4 the Referee, that issue was the fourth exception filed by Fudacz. The claimants
5 are asserting a priority date of June 30, 1889. The record is clear that a patent
6 was issued to Rueben Pardee on February 28, 1897, for the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
7 Section 11, T. 18 N., R. 17 E.W.M. within which the Fudacz farmstead lies. The
8 evidence indicates that the springs were in existence before the Westside Canal was
9 put into service around 1890 and that flow from the springs increased dramatically
10 over the next 20 years. Spring water has been used via pipelines and ditches to
11 irrigate the 7.71 acre field and presumably supplied stock water to the adjoining
12 4.12 acre field to the west. Testimony indicates that water is not run through the
13 pipeline running north between the two Dave Fudacz parcels during the
14 non-irrigation season. Therefore, the Referee recommends that the diversionary
15 stock water right previously recommended be modified to eliminate the
16 non-irrigation season and to reduce the annual quantity from 2 acre-feet per year
17 to 1 acre-foot. Thus, Page 166, Line 4 is amended to read April 15 through
18 October 31. The priority date of February 28, 1897, is appropriate as it reflects
19 the patent date. The Riparian Doctrine has been relied upon lacking evidence to
20 substantiate an earlier date. The Referee acknowledges that steps to sever the
21 land from Federal ownership began earlier than 1897; however, the record lacks
22 specific dates other than the homestead patent on which to base the priority date.
23 The exception states that there is evidence that water was first used in 1884;
24 however, that evidence was not brought to the Referee's attention.

25
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27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 8

1 The Referee recommends that a diversionary stock water right be issued to the
2 Fudacz's as described above.

3
4 COURT CLAIM NO. 02046 -- Elwin Gibson
5 & Patricia Gibson
6 Irwin Loucks
& Dorothy Loucks

7 The Referee recommended confirmation of two water rights: One from a spring
8 located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 18 N., R. 17 E.W.M. having a June 20, 1878,
9 priority date, and the other being the Yakima River at a point in common with the
10 diversion for the Thorp Mill Ditch having a priority date of December 28, 1888.
11 The recommended Yakima River water right is for substantially fewer acres than
12 encompassed by the claimants' farming practices. Exceptions to the Report of
13 Referee relating to Court Claim No. 02046 were filed with the Court by Richard T.
14 Cole on behalf of the claimants and by Jo Messex Casey, Assistant Attorney General,
15 on behalf of Plaintiff State of Washington Department of Ecology (Ecology).
16 Ecology requests refinement of the place of use for the spring water.

17 Claimants Gibson and Loucks assert that Water Right Claim (WRC) No. 118943
18 substantially complies with the filing requirements of RCW 90.14 for their combined
19 ownership. The basis for that conclusion is that Ben Gibson, the signatory on the
20 claim form, mistakenly omitted major portions of their ranch ownership. Gibson and
21 Loucks further contend that the Referee had both sufficient facts and the
22 discretion to amend WRC Claim No. 118943 to include all of the claimant's land
23 located within the SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 12 and the NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 13,
24 T. 18 N., R. 17 E.W.M. The Court has ruled via Memorandum Opinion RE: RCW 90.14
25 and Substantial Compliance that amendments to water right claims is exclusively a
26

27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 8

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FINDINGS OF FACT

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I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully examined the testimony and evidence, do hereby make the following Findings of Fact pursuant to the Order on Exceptions entered by this court on March 9, 1995:

Based upon the additional testimony and evidence obtained at either the exception hearing or the supplemental hearing, the Report of Referee - Subbasin No. 8, dated May 9, 1994, should be modified as ordered by the Court on March 9, 1995, and by recommendations made herein. Following are the rights recommended for confirmation in the May 9, 1994, Report of Referee for Subbasin No. 8, which were not modified as a result of the exceptions taken and the additional recommendations made by the Referee as a result of the Court's rulings at the exception hearing and the testimony and evidence presented at the supplemental hearing:

CLAIMANT NAME:	Elwin and Patricia Gibson and Claude and Lillian Gibson	COURT CLAIM NO. <u>02046</u>
Source:	An unnamed spring	
Use:	Irrigation of 9.5 acres and stock water	
Period of Use:	April 1 to October 31	
Quantity:	0.19 cubic foot per second, 62.7 acre-feet per year for irrigation and 2 acre-feet per year for stock water	
Priority Date:	June 30, 1878	
Point of Diversion:	1100 feet north and 550 feet east from the south quarter corner of Section 11, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 18 N., R. 17 E.W.M.	
Place of Use:	The NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 18 N., R. 17 E.W.M.	

SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 8

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Yakima, WA 98902-3401

1 CLAIMANT NAME: David W. and Lyla M. Fudacz COURT CLAIM NO. 04817

2 Source: Two unnamed springs

3 Use: Stock water

4 Period of Use: April 15 to October 31

5 Quantity: 0.02 cubic foot per second, 1 acre-foot per year

6 Priority Date: February 28, 1897

7 Point of Diversion: 1. 1,500 feet north and 200 feet east from the south
quarter corner of Section 11;
8 2. 1,400 feet north and 200 feet east from the south
quarter corner of Section 11; BOTH being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$
9 of Section 11, T. 18 N., R. 17 E.W.M.

10 Place of Use: That portion of the E $\frac{1}{2}$ of Section 11, T. 18 N.,
R. 17 E.W.M. described as follows: Beginning at the east
11 quarter corner of Section 11; thence N 89°19'11" W
1,329.81 feet to a point which is the approximate center
12 of Goodwin Road; thence S 00°17'19" W 20 feet to the south
right of way boundary of said county road and the true
13 point of beginning; thence S 00°17'19" W 187 feet; thence
N 89°19'11" W parallel with the south right of way of said
14 county road 820.19 feet; thence N 73°03'37" W 164.29 feet;
thence N 00°27'51" W 131.02 feet; thence continuing N
15 00°27'51" W 10 feet to a point on the south right of way
of said county road; thence S 89°19'11" E on said road
16 right of way 979.45 feet to the true point of beginning.


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27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 8

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The aforementioned changes shall be incorporated into the Report of Referee
dated May 9, 1994.
SIGNED and DATED at Yakima, Washington, this 4th day of March,
1997.


DOUGLAS CLAUSEING, Referee

SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 8

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IN AND FOR THE COUNTY OF YAKIMA

KIM M. EATON
CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON
DEC 03 1999
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3 IN THE MATTER OF THE DETERMINATION)
4 OF THE RIGHTS TO THE USE OF THE)
5 SURFACE WATERS OF THE YAKIMA)
6 RIVER DRAINAGE BASIN, IN)
7 ACCORDANCE WITH THE PROVISIONS OF)
8 CHAPTER 90.03, REVISED CODE OF)
9 WASHINGTON,)

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,
Plaintiff,

vs.

JAMES J. ACQUAVELLA, ET AL.,
Defendants

No. 77-2-01484-5

MEMORANDUM OPINION AND ORDER
RE: EXCEPTIONS TO SUPPLEMENTAL
REPORT OF REFEREE SUBBASIN 8
(THORP)

FILED
DEC 02 1999

KIM M. EATON
YAKIMA COUNTY CLERK

12 I. INTRODUCTION

On July 10, 1997, various Subbasin 8 claimants participated in a hearing to resolve exceptions taken to the Supplemental Report of Referee for Subbasin 8. Many of the exceptions were resolved at the hearing; a few were not. This opinion clarifies the record regarding the status of the unresolved claims in that subbasin.

16 II. MATTERS RESOLVED AT JULY 10, 1997 HEARING

Judge Walter Stauffacher resolved the following exceptions by oral ruling.

18 a. Charles Gust - Claim No. 01560

The Court GRANTED Mr. Gust's exception. The water right shall have a priority date of June 30, 1882. Report of Proceedings (RP) at p. 20.

21 b. Wynn & Catherine Vickerman (Hubert A. and Mary M. Schmitt) - Claim No. 0596

The Vickermans have transferred ownership of the property in question to Hubert and Mary M. Schmitt and obtained the appropriate Substitution Order. The Referee recommended that two rights be confirmed to the Vickermans, however no legal description was provided to the Referee. Included with the exception filed by the Vickermans was a legal description for their property.

Therefore, the court granted their exception. RP at 21. However, after the Schmitts were substituted for the Vickermans, an amended legal description was submitted apparently as a result of a survey of the property. The following legal description was provided:

Parcel V of that certain survey as recorded December 2, 1997 in Book 23 of Surveys at page 28, under Auditor's File No. 199712020001, records of Kittitas County, State of Washington; being a portion of the Southeast quarter of the Southeast quarter of Section 30, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.

This legal description is a parcel within a survey recorded in the Kittitas County Auditor's office. In order for the Court to use this new legal description, a copy of the survey is needed to show that the parcel lies within the previously described land. Therefore, the Court requests a copy of the survey as soon as possible but no later than February 10, 2000.

c. David and Lila Fudacz, Larry Fudacz (Claim Nos. 04817 and 04818)

The Fudacz exception concerned the lack of an RCW 90.14 filing to support their claims to springs. In their exception, the Fudaczs made the court aware of WRC No. 133399 filed by John A. Wilcox. The court agreed that the claim covered the property and GRANTED the exception. Therefore, a right is confirmed for irrigation of 3 acres (the acreage remaining in the 90.14 claim not utilized by Norma Jean Wilcox as a part of the Wilcox claim) from the spring in the quantities of 0.06 cfs; 19.8 acre-feet per year with a June 30, 1910 priority date. RP at 21.

The Place of Use shall be the West 660 feet of the East 1008.7 feet of the South 260 feet of the NE1/4SE1/4 of Section 11, T. 18N., R. 17 E.W.M..

d. Gene & Sally Panattoni – Court Claim No. 01208

Ecology identified that the instantaneous and annual quantities were omitted from the Referee's Schedule of Rights on page 116 of the Supplemental Report. The Schedule should include such quantities and therefore the Court GRANTS Ecology's exception. The Panattoni's are awarded an instantaneous diversion of 0.02 cfs; 1 acre-foot per year. RP at 21.

e. Irwin & Dorothy Loucks – Court Claim No. 02046

2 into the Packwood Canal that is used on Grousemont's 15.2 acres is return flow. The 3 acre-
3 feet limit is consistent with what was granted for Robinson Canyon Creek water uses by
4 Packwood. Grousemont argues that the water duty for the area is 25 acre feet per acre and
5 that based on Mr. Bain's analysis, half of that quantity is return flow and half is natural-flow.
6 Similarly, Grousemont (per Richard Bain's measurement) asserts in regard to the
7 instantaneous flow that 4.3 – 5.1 cfs is used (4.45 had been used in prior calculations).

8 The Pease Agreement entered into in 1903 indicates that 100 inches would be
9 delivered through the flume to the lands now being irrigated by Grousemont. 100 inches
10 equals approximately 2 cfs. That is the basis for the right. The Referee concluded that
11 Taneum Canal Company return flow would make up some portion of that water.
12 Grousemont offers the only evidence on how to split the diversion between natural and
13 return flow; ½ return flow, ½ natural flow. Because the instantaneous right established by
14 the Pease Agreement must be cut in half to 1 cfs to accommodate the portion that is return
15 flow, the exception taken by Grousemont must be DENIED. The Court GRANTS the
16 exception regarding annual use to confirm a right to 193.80 acre-feet. That quantity reflects
17 half of the water duty (25.5 acre-feet) recognized by the Referee as applying to those lands
18 (Report of Referee, page 76 lines 7-13). Thus, the acre feet quantity on the top of page 129
19 should be changed from 45.6 acre-feet to 193.80 acre-feet.

20 f. Packwood Canal Company – Claim No. 00785/04801

21 Pursuant to the Order signed on July 8, 1999, the court will reserve ruling on Packwood's
22 exceptions until the matter captioned Packwood Canal v. Ecology, No. 99-2-01764-1 is decided.

23 IV. CONCLUSION

24 This Opinion and Order resolves nearly all exceptions to the Referee's Supplemental Report.
25 Those matters not resolved (Packwood Canal Company, Wynn and Catherine Vickerman,
Willowbrook Farms, Grousemont Farms) shall proceed as directed in the Court's analysis of their
respective claim set forth above.

Dated this 2nd day of December.


Sidney Ottem, Court Commissioner

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FILED

OCT - 9 2003

KIM M. EATON
YAKIMA COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

IN THE MATTER OF THE DETERMINATION)
OF THE RIGHTS TO THE USE OF THE)
SURFACE WATERS OF THE YAKIMA RIVER)
DRAINAGE BASIN, IN ACCORDANCE WITH)
THE PROVISIONS OF CHAPTER 90.03,)
REVISED CODE OF WASHINGTON)

NO. 77-2-01484-5

THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

CONDITIONAL FINAL ORDER
SUBBASIN NO. 8
(THORP)

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

I.

On May 9, 1994, the Referee, John E. Acord, filed with the Court the Report of Referee Re: Subbasin No. 8 (Thorp). Thereafter, this Court set December 8, 1994, for a hearing on exceptions to this report. Pursuant to the direction of the Court, the Referee then served a notice (together with a copy of the report) upon all parties setting a time period for filing any exceptions to the report and for the aforementioned hearing on exceptions.

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II.

On December 8, 1994, the Court held a hearing on exceptions to the Report of Referee. The Court, after reviewing the exceptions and other materials and being fully advised, filed its Order On Exceptions RE: Subbasin 8 (Thorp) on March 9, 1995, which, among other matters, ordered that the Referee schedule a supplemental hearing to further consider certain claims as specified by the order.

III.

On June 5 and 6, 1995, Referee Douglas Clausing conducted a supplemental hearing as directed by the Court. On March 4, 1997, the Referee filed the Supplemental Report of Referee Re: Subbasin No. 8 (Thorp). This Court set July 10, 1997, for a hearing on exceptions to the supplemental report. Pursuant to direction of the Court, the Referee then served notice (together with a copy of the supplemental report) upon all parties, setting a time period for filing any exceptions to the supplemental report and for the aforementioned hearing on exceptions.

IV.

On July 10, 1997, the Court held a hearing on exceptions to the Supplemental Report of Referee Re: Subbasin No. 8 (Thorp). The Court orally ruled on several exceptions during the hearing and in its Memorandum Opinion and Order Re: Exceptions to Supplemental Report of Referee Subbasin No. 8 (Thorp), dated

1 December 2, 1999. On January 28, 2000, the Court filed its
2 Memorandum Opinion and Order Re: Packwood Canal's Exceptions to
3 Supplemental Report of Referee Subbasin 8 (Thorp). The Court set
4 a hearing on February 10, 2000, to take additional testimony in
5 regard to the exceptions filed by Willowbrook Farms Limited and
6 Theiline P. Scheumann (Grousemont Farms). On August 3, 2000, the
7 Court filed its Memorandum Opinion and Order Re: Willowbrook
8 Farms, Limited and Theiline P. Scheumann.

9 V.

10 Willowbrook Farms asked the Court to delay entry of a
11 Conditional Final Order while it sought amendment of its RCW
12 90.14 claim. Willowbrook Farms ultimately succeeded in amending
13 its RCW 90.14 claim and filed a motion requesting the Court to
14 confirm a water right consistent with the amended claim. The
15 Court filed its Memorandum Opinion Re: Willowbrook Farms LLP on
16 July 22, 2003.

17 VI.

18 The Court orders as follows:

- 19
- 20 1. The Report of Referee for Subbasin No. 8 (Thorp), filed
21 with the Court on May 9, 1994, as amended by the
22 Supplemental Report of Referee Re: Subbasin 8 (Thorp) filed
23 with the Court on March 4, 1997, as amended by the Court's
24 Orders on December 2, 1999, January 28, 2000 and August 3,
25

1 2000 and as further amended by the Memorandum Opinion on
2 July 22, 2003 are entered as a Conditional Final Order
3 confirming the rights recommended for confirmation in said
4 reports, opinions and orders as existing rights.

5
6 2. All claims to water rights before the Referee pertaining
7 to Subbasin No. 8 not so confirmed are denied.

8
9 3. The rights within Subbasin No. 8 (Thorp) shall be
10 administered according to this Conditional Final Order.

11 4. This Conditional Final Order, relating to the
12 confirmation of rights and denial of claims of water rights,
13 constitutes a final order for purposes of appeal (see RAP
14 2.2(d)), except for purposes of final integration of all
15 confirmed rights as provided in Section XII of Pretrial
16 Order No. 8 (Procedures for Claim Evaluation, dated March 3,
17 1989) of this Court.

18
19 DATED this 9th day of October, 2003.

20
21
22 
23 _____
24 SIDNEY P. OTTEM, COURT COMMISSIONER

EXHIBIT A-2

09/18/2019 04:45:36 PM 201909180085
Page: 1 of 2
WA STATE DEPT OF ECOLOGY
Kittitas County Auditor
Water Right

Return Name and Address:
WA State Dept. of Ecology
Central Regional Office
1250 W. Alder Street
Union Gap, WA 98903-0009

REVIEWED BY
KITITAS COUNTY TREASURER
DEPUTY W. W. W. W.
DATE 9/18/2019

PLEASE PRINT OR TYPE INFORMATION:

Document Title: Certificate of Adjudicated Water Right
Certificate Number: S4-83993-J
Grantor(s) 1. WA State Dept. of Ecology
Grantee(s) 1. Larry T. Fudacz 2. David W. Fudacz 3. Lyla M. Fudacz
Legal description (abbreviated) Section 11, T. 18 N., R. 17 E.W.M.
Reference Number(s) of documents assigned or released:
Assessor's Property Tax Parcel/Account Number(s): 573233, 725836
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information.



State of Washington
 Department of
 Ecology
**CERTIFICATE OF ADJUDICATED
 WATER RIGHT**



This certificate of adjudicated water right is issued pursuant to the Final Decree made and entered by the Superior Court of the State of Washington in and for Yakima County on the 9th day of May 2019 in the case of State of Washington, Department of Ecology v. James J. Acquavella, et al., County Cause No. 77-2-01484-5. This water right is subject to and will be administered according to the Final Decree, which under Paragraph 8 incorporates all orders and opinions entered in the case. In the event of a conflict between this Certificate and the Final Decree, the Final Decree shall govern.

WATER RIGHT HOLDER: Larry T. Fudacz David W. Fudacz Lyla M. Fudacz	MAILING ADDRESS: Larry T. Fudacz 211 Garden Street Cle Elum, WA 98922
--	---

CERTIFICATE NUMBER: S4-83993-J	COURT CLAIM NUMBER: 04817 (A)04942 04818	PRIORITY DATE: June 30, 1910
SUBBASIN NUMBER: 08	SUBBASIN NAME: Thorp	CFO DATE: October 9, 2003

Source

Two unnamed spring areas

Quantity

0.06 cubic foot per second, 19.8 acre-feet per year

Purpose of Use

Irrigation of 3 acres

Period of Use

April 1 through October 31

Point of Diversion

1: 1500 feet north and 2250 feet west of the southeast corner of Section 11, being within the NW¼SE¼ of Section 11, T. 18 N., R. 17 E.W.M.

2: 950 feet north and 1950 feet west of the southeast corner of Section 11, being within the SW¼SE¼ of Section 11, T. 18 N., R. 17 E.W.M.

Place of Use

The west 660 feet of the east 1008.7 feet of the south 260 feet of the NE¼SE¼ of Section 11, T. 18 N., R. 17 E.W.M.

Provisions and Limitations of Use

The right to the use of a water right established under the laws of the State of Washington and confirmed hereby is restricted to the lands or place of use, purpose(s) of use, and to the other specified terms and conditions herein described, unless approved for change as provided in RCW 90.03.380 or other statute.

This certificated water right may be subject to relinquishment for nonuse of water as provided in Chapter 90.14 RCW.

Given under my hand and the seal of this office at Union Gap, Washington, this 17th day of September, 2019.

Maia Bellon, Director
Department of Ecology



A handwritten signature in cursive script that reads "Trevor Hutton".

Trevor Hutton, Section Manager
Central Regional Office
Water Resources Program

DATA REVIEW
OK LB

To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program at 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

08/09/2019 04:02:09 PM

201908090001

Page: 1 of 3
3185.5g
Water Right WA STATE DEPT OF ECOLOGY
Kittitas County Auditor
KITTITAS COUNTY AUDITOR

Return Name and Address:
WA State Dept. of Ecology
Central Regional Office
1250 W. Alder Street
Union Gap, WA 98903-0009

REVIEWED BY
KITTITAS COUNTY TREASURER
DEPUTY *[Signature]*
DATE 8/9/2019

PLEASE PRINT OR TYPE INFORMATION:

Document Title: Certificate of Adjudicated Water Right
Certificate Number: S4-83971-J
Grantor(s) 1. WA State Dept. of Ecology
Grantee(s) 1. David W. Fudacz 2. Lyla M. Fudacz
Legal description (abbreviated) Section 12, T. 18 N., R. 17 E.W.M.
Reference Number(s) of documents assigned or released:
Assessor's Property Tax Parcel/Account Number(s): 643233
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information.



State of Washington
 Department of
 Ecology
**CERTIFICATE OF ADJUDICATED
 WATER RIGHT**



This certificate of adjudicated water right is issued pursuant to the Final Decree made and entered by the Superior Court of the State of Washington in and for Yakima County on the 9th day of May 2019 in the case of State of Washington, Department of Ecology v. James J. Acaugavella, et al., County Cause No. 77-2-01484-5. This water right is subject to and will be administered according to the Final Decree, which under Paragraph 8 incorporates all orders and opinions entered in the case. In the event of a conflict between this Certificate and the Final Decree, the Final Decree shall govern.

WATER RIGHT HOLDER: David W. Fudacz Lyla M. Fudacz	MAILING ADDRESS: David W. Fudacz PO Box 24 Thorp, WA 98946
---	--

CERTIFICATE NUMBER: S4-83971-J	COURT CLAIM NUMBER: 04398	PRIORITY DATE: June 30, 1878
SUBBASIN NUMBER: 08	SUBBASIN NAME: Thorp	CFO DATE: October 9, 2003

Source

An unnamed spring

Quantity

0.01 cubic foot per second, 3.3 acre-feet per year for irrigation and 2 acre-feet per year for stock water

Purpose of Use

Irrigation of one-half acre and stock water

Period of Use

April 1 through October 31

Point of Diversion

1100 feet north and 550 feet east from the south quarter corner of Section 11, being within the SW¼SE¼ of Section 11, T. 18 N., R. 17 E.W.M.

Place of Use

The north 100 feet of the east 200 feet of the west 500 feet of the SW¼SW¼SW¼ of Section 12, T. 18 N., R. 17 E.W.M.

Provisions and Limitations of Use

The right to the use of a water right established under the laws of the State of Washington and confirmed hereby is restricted to the lands or place of use, purpose(s) of use, and to the other specified terms and conditions herein described, unless approved for change as provided in RCW 90.03.380 or other statute.

This certificated water right may be subject to relinquishment for nonuse of water as provided in Chapter 90.14 RCW.

Given under my hand and the seal of this office at Union Gap, Washington, this 8th day of August, 2019.

Maia Bellon, Director
Department of Ecology



A handwritten signature in cursive script that reads "Trevor Hutton".

Trevor Hutton, Section Manager
Central Regional Office
Water Resources Program

DATA REVIEW
OK LB

To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program at 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

Return Name and Address:
WA State Dept. of Ecology
Central Regional Office
1250 W. Alder Street
Union Gap, WA 98903-0009

REVIEWED BY
KITTITAS COUNTY TREASURER
DEPUTY *V. M. Sholt*
DATE 8/9/2019

PLEASE PRINT OR TYPE INFORMATION:

Document Title: Certificate of Adjudicated Water Right
Certificate Number: S4-83948-J
Grantor(s) 1. WA State Dept. of Ecology
Grantee(s) 1. David W. Fudacz 2. Lyla M. Fudacz
Legal description (abbreviated) Section 11, T. 18 N., R. 17 E.W.M.
Reference Number(s) of documents assigned or released:
Assessor's Property Tax Parcel/Account Number(s): 11936
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information.



State of Washington
 Department of
 Ecology
**CERTIFICATE OF ADJUDICATED
 WATER RIGHT**



This certificate of adjudicated water right is issued pursuant to the Final Decree made and entered by the Superior Court of the State of Washington in and for Yakima County on the 9th day of May 2019 in the case of State of Washington, Department of Ecology v. James J. Acquavella, et al., County Cause No. 77-2-01484-5. This water right is subject to and will be administered according to the Final Decree, which under Paragraph 8 incorporates all orders and opinions entered in the case. In the event of a conflict between this Certificate and the Final Decree, the Final Decree shall govern.

WATER RIGHT HOLDER: David W. Fudacz Lyla M. Fudacz	MAILING ADDRESS: David W. Fudacz PO Box 24 Thorp, WA 98946
---	--

CERTIFICATE NUMBER: S4-83948-J	COURT CLAIM NUMBER: 04817 (A)04942	PRIORITY DATE: February 28, 1897
SUBBASIN NUMBER: 08	SUBBASIN NAME: Thorp	CFO DATE: October 9, 2003

Source

Two unnamed springs

Quantity

0.02 cubic foot per second, 1 acre-foot per year

Purpose of Use

Stock water

Period of Use

April 15 through October 31

Point of Diversion

1. 1500 feet north and 200 feet east of the south quarter corner of Section 11;
 2. 1400 feet north and 200 feet east of the south quarter corner of Section 11;
- BOTH being within the NW¼SE¼ of Section 11, T. 18 N., R. 17 E.W.M.

Place of Use

That portion of the E½ of Section 11, T. 18 N., R. 17 E.W.M. described as follows: Beginning at the east quarter corner of Section 11; thence N 89°19'11" W 1329.81 feet to a point which is the approximate center of Goodwin Road; thence S 00°17'19" W 20 feet to the south right-of-way boundary of said county road and the true point of beginning; thence S 00°17'19" W 187 feet; thence N 89°19'11" W parallel with the south right-of-way of said county road 820.19 feet; thence N 73°03'37" W 164.29 feet; thence N 00°27'51" W 131.02 feet; thence continuing N 00°27'51" W 10 feet to a point on the south right-of-way of said county road; thence S 89°19'11" E on said road right-of-way 979.45 feet to the true point of beginning.

Provisions and Limitations of Use

The right to the use of a water right established under the laws of the State of Washington and confirmed hereby is restricted to the lands or place of use, purpose(s) of use, and to the other specified terms and conditions herein described, unless approved for change as provided in RCW 90.03.380 or other statute.

This certificated water right may be subject to relinquishment for nonuse of water as provided in Chapter 90.14 RCW.

Given under my hand and the seal of this office at Union Gap, Washington, this 8th day of August, 2019.



Maia Bellon, Director
Department of Ecology

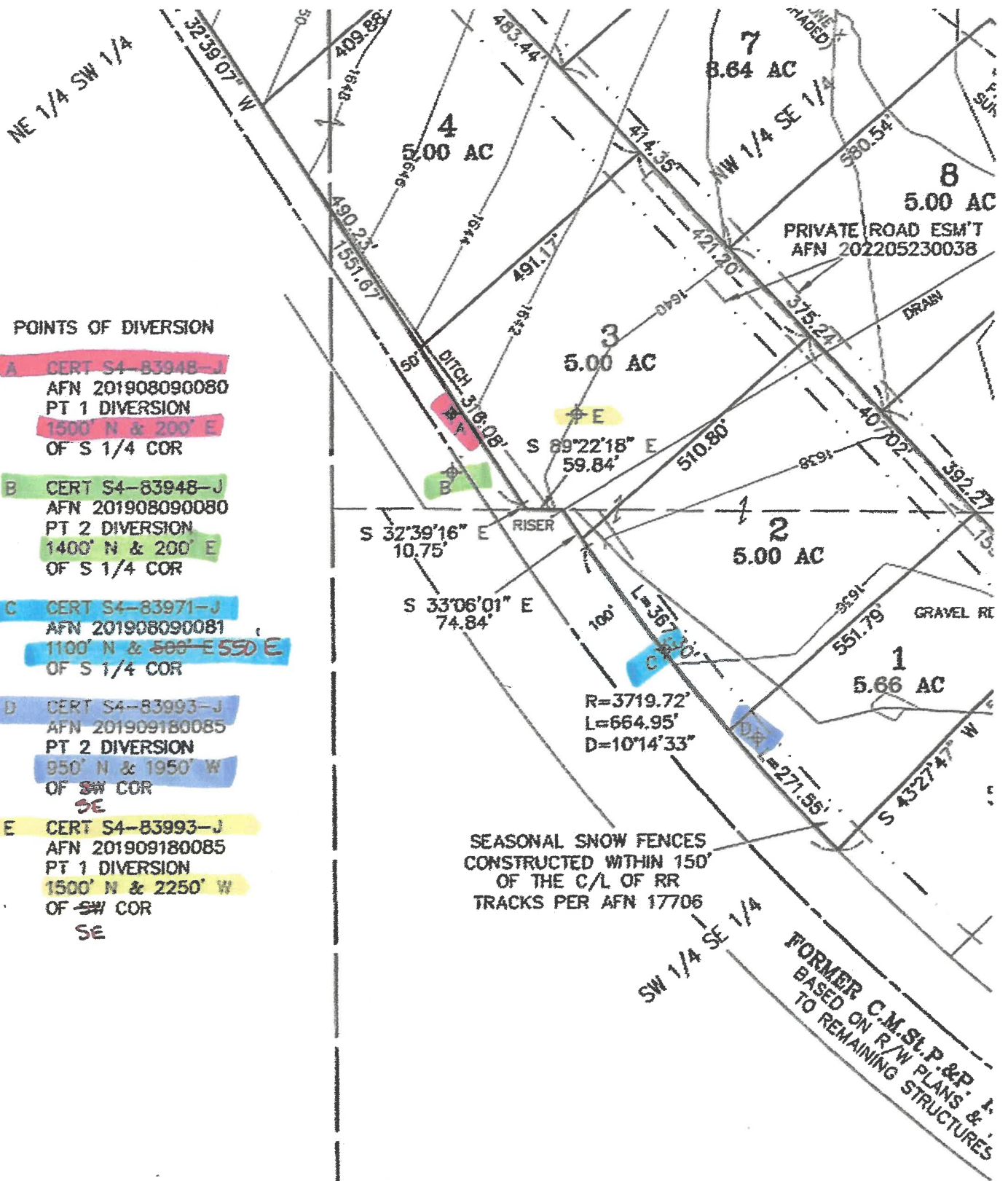
A handwritten signature in cursive script that reads "Trevor Hutton".

Trevor Hutton, Section Manager
Central Regional Office
Water Resources Program

DATA REVIEW
OKLB

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EXHIBIT A-3



POINTS OF DIVERSION

A CERT S4-83948-J
 AFN 201908090080
 PT 1 DIVERSION
 1500' N & 200' E
 OF S 1/4 COR

B CERT S4-83948-J
 AFN 201908090080
 PT 2 DIVERSION
 1400' N & 200' E
 OF S 1/4 COR

C CERT S4-83971-J
 AFN 201908090081
 1100' N & 500' E 550' E
 OF S 1/4 COR

D CERT S4-83993-J
 AFN 201909180085
 PT 2 DIVERSION
 950' N & 1950' W
 OF SW COR
 SE

E CERT S4-83993-J
 AFN 201909180085
 PT 1 DIVERSION
 1500' N & 2250' W
 OF SW COR
 SE

Exhibit B

JD

From: Joe Dietzel joe.dietzel@co.kittitas.wa.us
Subject: Thorp Landing Subdivision
Date: April 26, 2023 at 2:49 PM
To: Chad Bala bala.ce@gmail.com, kcfd1@fairpoint.net, Darren Higashiyama darren.higashiyama@co.kittitas.wa.us,
Jeremiah Cromie jeremiah.cromie@co.kittitas.wa.us

Good Afternoon,

After further review of the information regarding the 5 acre lots to be built on Thorp Landing Lane, the fire flow requirements and the fire hydrant system requirements are hereby waived. The lots are required to be sprinklered from the irrigation canal(s), the lots are low hazard WUIC scores, and the lots do not have a high ability to expose to other structures in the event of a fire. Thank you for your time.

Joseph A Dietzel

Kittitas County
Deputy Fire Marshal
509-962-7657
joe.dietzel@co.kittitas.wa.us



To schedule inspections: <https://www.co.kittitas.wa.us/cds/building/inspection-request.aspx> OR
call

(509) 962-7694

To view permit or inspection status: <https://co-kittitas-wa.smartgovcommunity.com/ApplicationPublic/ApplicationHome>

If this is a public records request, please go to:
<https://www.co.kittitas.wa.us/request/default.aspx>

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